It is true that a judgment rendered on Sunday was void at common law. *Blood* v. *Bates*, 31 Vt. 147; *Arthur* v. *Mosby*, 5 Ky. (2 Bibb) 589; *Hoghtaling* v. *Osborn*, 15 Johns. (N. Y.) 118. Yet we think that the court is correct in the distinction that is pointed out between the rendering, and the entering of the judgment, and in the statement made that the former is a judicial, and the latter a ministerial act. *Kayser* v. *Hall*, 85 Ill. 511; *Lee* v. *Carrollton Savings and Loan Assn.*, 58 Md. 301; *Butts* v. *Armor*, 164 Pa. St. 73, 30 Atl. 357; ROOD, ATTACHMENTS, GARNISHMENTS, JUDGMENTS AND EXECUTIONS, §§ 12 and 13. It does not seem just that a judgment should be avoided and that a party should lose his rights on account of an act of the clerk, not judicial in its nature, and over which the parties to the action had no control. Other ministerial acts done on Sunday are held to be valid. *Nixon* v. *Burlington*, — Ia. —, 115 N. W. 239; *Heisen* v. *Smith*, 138 Cal. 216, 71 Pac. 180; *Savings and Loan Society* v. *Thompson*, 32 Cal. 347. Hence the entering of a judgment upon the record on Sunday should not make the judgment void.

JUDGMENT—OBTAINED BY FRAUD—DIRECT OR COLLATERAL ATTACK.—Plaintiff brought action against defendants to recover for personal injuries. Defendants pleaded in bar to plaintiff's right of action a judgment obtained by plaintiff in a justice court, which judgment defendants had fully satisfied. Plaintiff replied that this judgment was obtained by fraud. *Held*, that under the present North Carolina practice, "where courts are empowered to administer full relief in one and the same action, when all of the parties to be affected by the decree are before the court, and a judgment is set up in bar and directly assailed in the proceeding for fraud, this is a direct and proper proceeding to determine its validity." *Houser* v. *W. R. Bonsal & Co.* (1908), — N. C. —, 62 S. E. 776.

The court in this case holds, citing authorities, that the judgment of the justice court could not be impeached except by direct attack, but is of the opinion that the attack here is a direct attack. We think this view erroneous as the terms direct and collateral attack are ordinarily used. In *Crawford* v. *McDonald*, 88 Tex. 626, 33 S. W. 325, 327, DENMAN, J., defines a direct attack on a judgment as "an attempt to amend, correct, reform, vacate, or enjoin the execution of same in a proceeding instituted for that purpose." On the other hand, "A collateral attack on a judgment is any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree or enjoining its execution." *Morrill* v. *Morrill*, 20 Or. 96, 25 Pac. 362, 11 L. R. A. (O. S.) 155, 23 Am. St. Rep. 95. See also *Smith* v. *Morrill*, 55 Pac. 824, 826, 12 Colo. App. 233. In the principal case the plaintiff did not seek, when he filed his complaint, to annul, correct, or modify the judgment of the justice court, or to enjoin its execution; the complaint ignored that judgment, and it was only collaterally that it was drawn in question. If there was fraud in procuring the judgment in the justice court the plaintiff should have raised the question in that court, and prevented the rendering of the judgment. Having failed to

do so he should not now raise the question except in a proceeding brought for the express purpose of setting the judgment aside. Of course, the statute provides that all of the rights of the parties shall be settled in one and the same proceeding, but where these rights are of such a nature as to call for more than one separate proceeding and are not parts of the same cause of action, it would seem that this provision of the statute should not apply.

MASTER AND SERVANT—INJURIES TO SERVANT—NATURE OF DEFENSES.—Plaintiff, a coal shoveler, also had charge of a machine operating an elevator, and went into a small engine house to remedy a defect in the machine when he stumbled and fell under an unguarded belt. In an action for damages for resulting injuries the lower court dismissed the case on the ground that the risk was assumed and on appeal it was *held* that the plaintiff's assumption of risk and his contributory negligence were questions for the jury. *Rase* v. *Minneapolis, St. Paul & S. S. M. Ry. Co.* (1909), — Minn. —, 120 N. W. 360.

In a well considered opinion the court attempts to discover and apply the law as the courts taken as a whole have determined it. The defendant in an action for negligence has two defenses: 1. That which is usually called contributory negligence, or that the defendant's negligent act was not the real proximate cause. 2. To admit that his act caused the damage but to deny the duty, which defense is expressed by the maxim, "Volenti non fit injuria," which is really proof of no basis to a right of action. These two defenses are distinct and dissimilar. Confusion has arisen because in many states contributory negligence is not treated as a defense but rather as a bar to the plaintiff's case which he must remove before being able to maintain his action. COOLEY, TORTS, p. 810, *Limberg* v. *Glenwood Lumber Co.*, 127 Cal. 598 and extended note 49 L. R. A. 33. The failure to observe this distinction has led to deplorable consequences sometimes amounting to a miscarriage of justice which an inaccurate terminology and logical laxity have combined to produce. Under the true rule when only the servant's knowledge of defects is shown, contributory negligence and assumption of risk both of which involve close questions about which reasonable minds might reach different conclusions are questions of fact both at common law and under the employer's liability acts. In England it would seem that there is now a clear tendency on the part of the courts to treat the question of what inference is to be drawn from the mere fact that the plaintiff, after he knew the conditions of the premises, continued to work and did not quit his employment, as one for the jury. 17 JURID. L. R. 45; *Griffiths* v. *London Docks Co.*, 12 Q. B. D. 493, 13 Q. B. D. 259. The American cases taken as a whole are inclined to regard the questions involved in assumption of risk—knowledge of dangerous conditions, appreciation of risk and acquiescence therein—as for the jury. See cases collected in *Mahoney* v. *Dore*, 155 Mass. 513, 30 N. E. 366; *Dempsey* v. *Sawyer*, 95 Me. 295, 49 Atl. 1035; *Fitzgerald* v. *Conn. River Paper Co.*, 155 Mass. 155, 29 N. E. 464, 31 Am. St. Rep. 544; *Choctaw etc. Ry. Co.* v. *Jones*, 77 Ark. 367, 92 S. W. 244, 4 L. R. A. (N. S.) 837. There are cases where the risk is so